IN THE

Supreme Court of the United States

October Term, 1949

No.....

G. PULLEN JACKSON AND FRANK L. HORAN, a Partnership, practicing under the name of JACKSON AND HORAN, Appellants,

v.

HARRY V. VANCE, Trustee of the Estate of WILLIAM O. STUART: and ALBUQUERQUE NATIONAL TRUST AND SAVINGS BANK, Appellees,

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PETITION FOR WRIT OF CERTIORARI

The appellants below, petitioners here, respectfully petition for a writ of certiorari to be directed to the United States Court of Appeals, Tenth Circuit, to review a judgment of that Court, entered on the 30th day of December, 1949, petition for a rehearing denied the 24th day of January, 1950, and affirming a judgment of the United States District Court, for the District of New Mexico, in favor of Respondent and against petitioner and in support thereof respectfully show the court:

I.

That on February 1, 1947, petitioners entered into a written contract with W. O. Stuart to prosecute certain

claims against three insurance companies, who had insured Stuart against loss by fire. Pursuant to their employment petitioners prepared necessary and extensive proofs of claim and when liability was denied, petitioners brought suit in the District Court of Bernalillo County, New Mexico, on June 16, 1947. On June 19, 1947, W. O. Stuart was adjudicated a bankrupt by the United States District Court for the District of New Mexico. Vance, the trustee in bankruptcy, moved the State District Court to have himself substituted as party plaintiff, in the place of W. O. Stuart, which the State District Court ordered and by the same order fixed a charging and retaining lien in favor of appellants in an amount of 15% of any amounts recovered in the cause in the State District Court. This action in the State District Court was settled in favor of plaintiff for $60,000.00, and the action dismissed with prejudice. Petitioners took action in the State District Court, and in the United States District Court sitting as a Bankruptcy Court to enforce their lien. The United States District Court denied the validity of petitioners lien and reversed the referee in Bankruptcy who had held that Petitioners had a lien on $25,000.00, and this action of the District Court was affirmed by the Court of Appeals. From this judgment this petition is prosecuted.

II.

This case involves four questions:

1. Does a lien created by a contract have the same force, effect, and dignity as a mortgage, where only services were furnished under the contract and money and goods were supplied under the mortgage?

2. Can a Federal Court permit its officers, and Trustee in Bankruptcy to use the State Courts, and take advantage of the orders, judgments, or decrees that are favorable; but reject all unfavorable action of the State Court on the theory it is without jurisdiction to enter such orders, judgments, or decrees?

3. Jurisdictional conflict between State and Federal Courts.

4. Did the judgment, order, or decree of the state court become binding and res judicata regardless of whether or not the Court had jurisdiction at the time it entered judgment, no appeal having been taken within the time prescribed by law?

III.

Petitioners rely on the following for the granting of the writ:

1. That the decision in this case, which is included in and made a part of the record herewith, is in direct conflict with Sherman vs. Buckley, 119 F(2d)280, cert. denied, 86 L. ed 527, 314 U. S. 657, decided by the Court of Appeals, Second Circuit. Mr. Justice Murrah of the Tenth Circuit dissented from the majority opinion, stating:

> "In my view, this case is not different from Sherman vs. Buckley, 119 F. 2d 280, and I would reverse the judgment on the authority of that case."

2. That an important question of Federal law has not been, but should be settled, by the United States Supreme Court.

3. That the Court of Appeals has decided a Federal

question in a way which is probably in conflict with the decisions of this Court.

IV.

Your petitioners present to this Court, as an exhibit to this petition, a certified transcript of the record of the case as it appeared in the Circuit Court of Appeals, Tenth Circuit.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari may issue to the United States Court of Appeals, Tenth Circuit, so that the judgment of that Court may be revised by this Court.

Arthur T. Hannett,
Attorney for Petitioners